

Court of Appeals, State of Michigan

ORDER

People of MI v Delmerey Deshawn Morris

Docket No. 354602

LC No. 11-003373-01-FC

Karen M. Fort Hood
Presiding Judge

Cynthia Diane Stephens

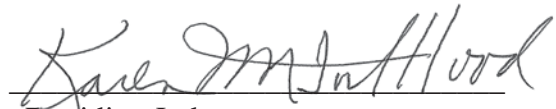
Thomas C. Cameron
Judges

The motion to waive fees is GRANTED for this case only.

Pursuant to MCR 7.205(E)(2), in lieu of granting the application, the trial court's January 29, 2020 order is VACATED and the matter REMANDED for further proceedings. Defendant's motion for relief from judgment is based on new evidence that was not discovered before his first such motion, and thus, is not barred by MCR 6.502(G). *People v Swain*, 499 Mich 420 (2016). To be entitled to relief, however, defendant must still satisfy the four-part new evidence test of *People v Cress*, 468 Mich 678; 664 NW2d 174 (2003). *People v Johnson*, 502 Mich 541, 565-566; 918 NW2d 676 (2018). Here, the new affidavits presented by defendant challenge the credibility of the prosecution's main witness against defendant. The trial court refused to consider these affidavits because defendant has previously raised claims that this witness was not credible. However, the affidavits raise new concerns with the witness's credibility. On remand, the trial court must apply the four-part *Cress* test to determine if defendant is entitled to a new trial. See *id.* at 565-579.

The motion to remand is DENIED, but without prejudice to the trial court's ability to order that an evidentiary hearing be held if necessary to resolve the issues presented on remand. See MCR 6.508(C); MCR 6.505(A).

This order is to have immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.


Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

February 4, 2021
Date


Chief Clerk